

By: Dutton

H.B. No. 403

A BILL TO BE ENTITLED

AN ACT

relating to the penalty for certain offenders for possession of a small amount of certain controlled substances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 481.115, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), an [An] offense under Subsection (a) is a Class A misdemeanor with a minimum term of confinement of 180 days [state jail felony] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(b-1) An offense punishable under Subsection (b) is a state jail felony if the person has been previously convicted of an offense under this section or Section 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121.

SECTION 2. Section 481.1151, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An offense under this section is:

(1) a Class A misdemeanor with a minimum term of confinement of 180 days [state jail felony] if the number of abuse units of the controlled substance is fewer than 20, except as provided by Subsection (c);

(2) a felony of the third degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;

(4) a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and

(5) punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed \$250,000, if the number of abuse units of the controlled substance is 8,000 or more.

(c) An offense punishable under Subsection (b)(1) is a state jail felony if the person has been previously convicted of an offense under this section or Section 481.115, 481.116, 481.1161, 481.117, 481.118, or 481.121.

SECTION 3. Section 481.116, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), an [An] offense under Subsection (a) is a Class A misdemeanor with a minimum term of confinement of 180 days ~~[state jail felony]~~ if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(b-1) An offense punishable under Subsection (b) is a state jail felony if the person has been previously convicted of an offense under this section or Section 481.115, 481.1151, 481.1161,

1 481.117, 481.118, or 481.121.

2 SECTION 4. Section 481.134(d), Health and Safety Code, is  
3 amended to read as follows:

4 (d) An offense otherwise punishable under Section  
5 481.112(b), 481.113(b), 481.114(b), 481.115(b-1) [~~481.115(b)~~],  
6 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.120(b)(3), or  
7 481.121(b)(3) is a felony of the third degree if it is shown on the  
8 trial of the offense that the offense was committed:

9 (1) in, on, or within 1,000 feet of any real property  
10 that is owned, rented, or leased to a school or school board, the  
11 premises of a public or private youth center, or a playground; or

12 (2) on a school bus.

13 SECTION 5. Section 11, Article 42.12, Code of Criminal  
14 Procedure, is amended by adding Subsection (n) to read as follows:

15 (n) A judge who grants community supervision to a person  
16 convicted of a Class A misdemeanor under Section 481.115(b),  
17 481.1151(b)(1), 481.116(b), or 481.1161(b)(2), Health and Safety  
18 Code, shall require, as a condition of community supervision, that  
19 the person successfully complete an educational program on  
20 substance abuse awareness approved by the Department of State  
21 Health Services.

22 SECTION 6. Section 15(a)(1), Article 42.12, Code of  
23 Criminal Procedure, is amended to read as follows:

24 (1) On conviction of a state jail felony under Section  
25 481.115(b-1) [~~481.115(b)~~], 481.1151(c) [~~481.1151(b)(1)~~],  
26 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.121(b)(3), or  
27 481.129(g)(1), Health and Safety Code, that is punished under

1 Section 12.35(a), Penal Code, the judge shall suspend the  
2 imposition of the sentence and place the defendant on community  
3 supervision, unless the defendant has previously been convicted of  
4 a felony, other than a felony punished under Section 12.44(a),  
5 Penal Code, or unless the conviction resulted from an adjudication  
6 of the guilt of a defendant previously placed on deferred  
7 adjudication community supervision for the offense, in which event  
8 the judge may suspend the imposition of the sentence and place the  
9 defendant on community supervision or may order the sentence to be  
10 executed. The provisions of this subdivision requiring the judge  
11 to suspend the imposition of the sentence and place the defendant on  
12 community supervision do not apply to a defendant who:

13 (A) under Section 481.1151(c) [~~481.1151(b)(1)~~],  
14 Health and Safety Code, possessed more than five abuse units of the  
15 controlled substance;

16 (B) under Section 481.1161(b)(3), Health and  
17 Safety Code, possessed more than one pound, by aggregate weight,  
18 including adulterants or dilutants, of the controlled substance; or

19 (C) under Section 481.121(b)(3), Health and  
20 Safety Code, possessed more than one pound of marihuana.

21 SECTION 7. The change in law made by this Act applies only  
22 to an offense committed on or after the effective date of this Act.  
23 An offense committed before the effective date of this Act is  
24 governed by the law in effect on the date the offense was committed,  
25 and the former law is continued in effect for that purpose. For  
26 purposes of this section, an offense was committed before the  
27 effective date of this Act if any element of the offense was

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1 committed before that date.

2 SECTION 8. This Act takes effect September 1, 2015.